Supreme Court, U. S.
FILED
NOV 28 1975
MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

October Term, 1975
No. 74-1563

THE CITY OF EASTLAKE, *et al.*,
Petitioners,

vs.

FOREST CITY ENTERPRISES, INC.,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

BRIEF OF AMICI CURIAE CITIES OF EUCLID, KIRTLAND, WILLOUGHBY HILLS, AND WILLOWICK, OHIO

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INTEREST OF THE CITIES OF EUCLID, KIRTLAND, WILLOUGHBY HILLLS, AND WILLOWICK AS AMICI CURIAE

The cities of Euclid, Kirtland, Willoughby Hills, and Willowick, Ohio, acting by and through their respective Law Directors, submit this brief in support of the petitioner, the City of Eastlake, pursuant to Rule 42.

The City of Euclid is situated in Cuyahoga County and directly adjoins the east side of the City of Cleveland. Kirtland, Willoughby Hills, and Willowick lie further to the east in neighboring Lake County. They fall in the mainstream of Cleveland's rapid eastward expansion. Each is a charter city with broad powers of home rule granted to it under Article XVIII of the Ohio Constitution. Each prides itself on its ability to manage its own affairs while remaining responsive to the needs of the larger community.

Forest City Enterprises, Inc. is one of many large commercial developers who have benefited from the area's growth. It currently has controlling interest in a number of large multi-story apartment complexes in several of these communities. City records show that the apartment buildings accommodate as many as four hundred families, and rents are gauged principally for middle and upper income brackets. The apartments necessarily rely on these cities to provide them with police and fire protection, utility services, highway maintenance, and the other important municipal services.

Under the various zoning plans adopted by each of these communities, and ratified by the voters, the location of apartments has been restricted, and growth has been allowed to progress in an orderly fashion. The voters of Euclid have always been permitted to register their approval or disapproval of changes in zoning through the referendum.[1] Kirtland,[2] Willoughby Hills,[3] and Willowick[4] in recent years have enacted charter provisions similar to that of Eastlake, making a referendum mandatory whenever land use or zoning changes are proposed by their respective municipal councils.

The citizens of these communities value their right to participate in the planning of their communities' future. They therefore join with the City of Eastlake in petitioning this Court to see that this fundamental right is not taken from them.

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1. Art. III, §1, Charter of the City of Euclid, Ohio, as amended (1974).

2. Art. 9, Charter of the City of Kirtland, Ohio, as amended (1973).

3. Art. VI, §6.2, Charter of the City of Willoughby Hills, Ohio, as amended (1973).

4. Art. III, §3.15, Charter of the City of Willowick, Ohio, as amended (1973).

ARGUMENT

I. A MUNICIPAL CHARTER AMENDMENT WHICH PROVIDES FOR A MANDATORY REFERENDUM BEFORE ANY ORDINANCE AFFECTING ZONING OR LAND USE BECOMES EFFECTIVE AFFORDS FULL DUE PROCESS OF LAW UNDER THE UNITED STATES CONSTITUTION.

The powers of initiative and referendum have been enjoyed by the people of Ohio as a part of their fundamental law since the State's constitution was amended in 1912. OHIO CONST. Art. II, §1f. Ohio does not stand alone in this respect, for these rights are enjoyed by the citizens of almost every state of the union. As this Court correctly observed when it considered the California referendum provision in *James v. Valtierra*, 402 U.S. 137 (1971), "Provisions for referendums demonstrate devotion to democracy, not to bias, discrimination, or prejudice." *Id.* at 141. Nevertheless respondent contends that the City of Eastlake's Charter provision, which requires a referendum of any ordinance that affects zoning or land use, conflicts with the due process requirements of the federal constitution.

There can be little question that the charter provision is valid under Ohio law. Section 1f of Article II of the Ohio Constitution provides:

> The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action . . . .

That zoning is a legislative matter is evident from the decisions of this Court, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926); *Berman v. Parker*, 348 U.S. 26, 32-33 (1954), and has been consistently recognized by the Ohio courts. *Berg v. Struthers*, 176 Ohio St. 146, 198 N.E.2d 48 (1964); *Donnelly v. Fairview Park*, 13 Ohio St. 2d 1, 233 N.E.2d 500 (1968). It is equally clear, as the Ohio Supreme Court noted in its opinion below, that under Ohio law zoning is a proper subject for the referendum process.[5] *Forest City Enterprises, Inc. v. City of Eastlake*, 41 Ohio St. 2d 187, 324 N.E.2d 740 (1975); *Hilltop Realty v. City of South Euclid*, 110 Ohio App. 535, 164 N.E.2d 180 (1960). Thus, the only question before this Court is whether a mandatory referendum provision vio-

5. It has been widely recognized that zoning measures are a proper subject for referendum procedures. *Jackson v. Denver Producing & Refining Co.*, 96 F.2d 457 (10th Cir. 1938); *Wheelright v. County of Marin*, 2 Cal. 3d 448, 85 Cal. Rptr. 809, 467 P.2d 537 (1970); *Dwyer v. City Council of Berkeley*, 200 Cal. 505, 253 P. 932 (1927); *Reva v. Township of Portage, Kalamazoo County*, 356 Mich. 381, 96 N.W.2d 778 (1959); *State ex rel. Hunzicker v. Pulliam*, 168 Okla. 632, 37 P.2d 417 (1934). *See also*, ANNOT. 122 A.L.R. 769, 789 (1938). Some states have held, however, that the initiative is not available for zoning matters. *See, e.g., Hurst v. City of Burlingame*, 207 Cal. 134, 277 P. 308 (1929); *State ex rel. Powers v. Donohue*, 368 S.W.2d 432 (Mo. 1963); *Dewey v. Doxey-Layton Realty Co.*, 3 Utah 2d 1, 277 P.2d 805 (1954). Generally, the rationale of these decisions is that the initiative procedure does not provide for a hearing, which is required under most of the state zoning statutes. The validity of the rationale is at least questionable. A New Jersey court has observed, "The election campaign, the debate and airing of opposing opinions, supplant a public hearing prior to the adoption of an ordinance by the municipal governing body." *Meridian Development Company v. Edison Township*, 91 N.J. Super. 310, 315, 220 A.2d 121, 124 (1966) (citations omitted).

In any case, the present controversy is concerned with the use of a referendum. Consequently, there is always a hearing by the Planning Commission and a second hearing by the City Council before any zoning measure is presented to the voters for their approval. Thus there can be no question that a zoning referendum authorized by state law is permissible.

lates the due process clause of the United States Constitution.

Respondent's principal argument hinges on a series of three cases which involved local restrictions on zoning ordinances. In *Eubank v. City of Richmond*, 226 U.S. 137 (1912), a municipal ordinance provided that building lines would be established upon request by two-thirds of the owners of property abutting any street. The Court ruled that the ordinance was invalid because:

> *One set of owners* determine not only the extent of use but the kind of use which another set of owners may make of their property. *Id.* at 143 (emphasis added).

Because only the neighbors on the same street were involved in the decisionmaking process, the Court observed that it would be possible that "*One* person having a two-thirds ownership of a block may have that power against a *number* having a less collective ownership." *Id.* at 144 (emphasis original).

Next, in *Thomas Cusack Co. v. City of Chicago*, 242 U.S. 526 (1917), a Chicago ordinance prohibited the erection of billboards in certain areas except with the consent of the neighbors "owning the majority of the frontage on both sides of the street in any block" in which the billboard was to be erected. *Id.* at 52. In upholding the ordinance, the Court distinguished *Eubank* in that it had been concerned with imposing an additional restraint, while the Chicago ordinance allowed the property owner to be relieved of restrictions if the neighbors consented.

Finally, in *Washington, ex rel. Seattle Title Trust Co., v. Roberge*, 278 U.S. 116 (1928), a Seattle ordinance provided that philanthropic homes for children or old people

were permitted in a First Residence District, but only with the consent of the owners of two-thirds of the property within four hundred feet of the proposed building. The Court ruled that the ordinance constituted an invalid delegation of legislative power, and therefore violated the due process clause.

These three cases, however, are readily distinguishable from the present one. In the earlier cases the imposition of the challenged restriction was decided upon by consent of the neighboring property owners. By definition such owners had personal vested interests in the questions which were delegated to them. In that context, the possibility that the property owners would consider only their individual interests, rather than the best interests of the community as a whole, was of such proportion as to present an understandable threat to the principles of due process. It was as if only one councilman were permitted to determine the issues which affected the ward which he represented. That kind of arrangement stands in stark contrast to the referendum procedure of the present case.

Under the challenged Eastlake Charter provision the voters of the entire community have the right to voice their opinions on matters that involve zoning. The distinction between a decision by a handful of neighbors and that of the electorate has been clearly defined by the Ninth Circuit Court of Appeals in *Southern Alameda Spanish Speaking Organization v. City of Union City, Cal.*, 424 F.2d 291 (9th Cir. 1970):

> A referendum, however, is far more than an expression of ambiguously founded neighborhood preference. It is the city itself legislating through its voters—an exercise by the voters of their traditional right through direct legislation to override the views

> of their elected representatives as to what serves the public interest. See Spaulding v. Blair, 403 F.2d 862 (4th Cir. 1968). This question lay at the heart of the proposition put to the voters. That some voters individually may have failed to meet their responsibilities as legislators to vote wisely and unselfishly cannot alter the result. *Id.* at 294.

Similarly, in *James v. Valtierra, supra,* this Court upheld a mandatory referendum provision in California. Writing for the majority, Justice Black concluded that a mandatory referendum gives the citizens of a community "a voice in decisions that will affect the future development of their own community." 402 U.S. at 143.

While the *Valtierra* case involved a referendum for low-rent housing projects, the reasoning of the Court is even more cogent when applied to zoning matters. Zoning issues are undoubtedly among the most important questions faced by a municipal government. As Mr. Justice Marshall recently stated:

> . . . zoning is a complex and important function of the State. It may indeed be the most essential function performed by local government, for it is one of the primary means by which we protect that sometimes difficult to define concept of quality of life. *Village of Belle Terre v. Boraas,* 416 U.S. 1, 13 (1974) (dissenting opinion).

Considering zoning's vast importance to the citizens of a community, it would be paradoxical to deny the voters a voice in zoning decisions under the guise of the due process clause.

Furthermore, if respondent's argument is correct that *Eubank, Cusack,* and *Roberge* apply to the facts of the

present case, it is difficult to determine where the line should be drawn. If the reasoning of those cases is extended so that it applies to city-wide elections, then no initiative and no referendum would ever be valid. Obviously, such an argument sweeps far too broadly.

Respondents have argued, and the Ohio Supreme Court has ruled, that the Eastlake mandatory referendum constitutes "an unlawful delegation of legislative power." 41 Ohio St. 2d at 198, 324 N.E.2d at 747. The ruling is based, not on an interpretation of the Ohio Constitution, but on the due process clause of the federal constitution. Such reliance on the due process clause is misplaced and demonstrates a misconception of the nature and source of legislative power.

As noted above, Section 1f of Article II of the Ohio Constitution expressly "reserves" the power of referendum to the people. The power is inherent in the people; it is therefore difficult to understand how it can be said that it has been unlawfully delegated to them. It is even more difficult to understand how such an argument can be based on the federal constitution when the tenth amendment expressly provides that:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, *or to the people*. U.S. CONST. Amend. X (emphasis added).

As our Declaration of Independence so eloquently states, the power of the government is derived "from the consent of the governed." While both state and federal constitutions delegate much of the legislative power to the respective legislatures, the power of referendum has been specifically reserved to the people in Ohio under their state constitution. *See State ex rel. Davis v. Hildebrant*, 94 Ohio St. 154, 114 N.E. 55 (1916), *aff'd*, 241 U.S. 565. This reservation of power provided for in the state constitution is expressly protected by the tenth amendment of the federal constitution. The determination of legislative questions by referendum, therefore, is the exercise not of a delegated power, but of a reserved power. It is the people themselves giving their consent to be ruled by an ordinance of their own making.

The distinction between reservation and delegation highlights the distinction between *Eubank, Cusack* and *Roberge* and the present case. In the former, legislative authority was delegated to a small group of neighbors. In the instant case, the *electorate* is exercising its reserved power.

Respondent has also expressed concern that to permit voters to decide zoning issues would permit them to make decisions which would be arbitrary and capricious, and that there would be no necessary and substantial relationship between zoning regulations and the public health, safety, morals, or general welfare as is required by constitutional standards. It is submitted, however, that there is likewise no guarantee that legislation enacted by a municipal legislative authority will meet constitutional standards. The remedy in both cases, of course, is not to invalidate the procedure, but to use the judicial remedies which are always available. *Nectow v. City of Cambridge*, 277 U.S. 183 (1928). A prejudgment, however, that the electorate cannot be entrusted with such matters undermines the very foundation of our democracy, which is founded on the principle of government by the people.

The expressions of distrust for the judgment of the electorate which permeate respondent's argument are unbefitting our democratic heritage. For this Court to embrace such distrust would certainly not do justice to that heritage.

II. THE CITY OF EASTLAKE'S MANDATORY REFERENDUM PROCEDURE FOR ZONING ORDINANCES IS DESIGNED TO PROTECT THE PROPERTY INTERESTS OF ALL THE CITY'S CITIZENS, AND INFRINGES ON NO CONFLICTING CONSTITUTIONAL RIGHTS.

As this Court stated nearly fifty years ago, zoning is a product of the modern age. *Village of Euclid v. Amber Realty Company, supra,* at 386. It imposes a variety of restrictions on the use of property so that the rights remaining may be more fully enjoyed. Because our society is growing constantly more complex, the role of zoning in preserving orderly development is increasingly more vital. This the Court has consistently recognized. *Berman v. Parker,* 348 U.S. 26 (1954); *Village of Belle Terre v. Boraas, supra.* Little more than a year ago, Mr. Justice Douglas outlined the breadth of the zoning power as follows:

> A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. This goal is a permissible one within *Berman v. Parker, supra.* The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and blessings of quiet seclusion and clean air make the area a sanctuary for people. *Village of Belle Terre* at 9.

Although it has been argued by some that modern planned development as reflected in zoning laws is exclusionary, and that it inhibits the exercise of other fundamental constitutional rights such as the right to travel and freedom of association, these arguments have been repeatedly rejected. *Village of Belle Terre* at 7; *Construction Industry Association of Sonoma County v. City of Petaluma,* 44 L.W. 2093 (9th Cir. 1975); *Golden v. Planning Board of Ramapo,* 30 N.Y.2d 359, 334 N.Y.S.2d 138, 285 N.E.2d 291 (1972), *appeal dismissed,* 409 U.S. 1003.

In assessing the burdens that zoning imposes on some property owners, it is important not to lose sight of the various interests that are protected by a zoning plan. Once a plan is established, property owners place a certain degree of reliance on the fact that the zoning will not be changed hastily. A party who complains that he is not permitted to build multi-family apartment complexes on his property because it is zoned for single family residential use would be the first to complain if heavy industry were permitted to move in next to one of his apartment buildings. On balance, it is clear that zoning does far more to protect property rights than to restrict them.

The Court in *Ambler* was fully aware of the importance of zoning in protecting property rights, stating its concern as follows:

> With particular reference to apartment houses, it is pointed out that the development of detached house sections is greatly retarded by the coming of apartment houses, which has sometimes resulted in destroying the entire section for private house purposes; that in such sections very often the apartment house is a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district. Moreover, the coming of one apartment house is followed by others, interfering by their height and bulk with the free circulation of air and monopolizing the rays of the sun which otherwise would fall upon the smaller homes, and bringing, as their necessary accompaniments, the disturbing noises incident to increased

traffic and business, and the occupation, by means of moving and parked automobiles, of larger portions of the streets, thus detracting from their safety and depriving children of the privilege of quiet and open spaces for play, enjoyed by those in more favored localities, until, finally, the residential character of the neighborhood and its desirability as a place of detached residences are utterly destroyed. Under these circumstances, apartment houses, which in a different environment would be not only entirely unobjectionable but highly desirable, come very near to being nuisances. 272 U.S. 394-95.

Further, the interests of the voters in supervising the zoning of their city is not limited to the protection of their property. Zoning changes can have a tremendous impact on city services and the resultant taxes that voters will be required to pay to maintain those services. The sudden influx of multi-story apartment buildings can seriously threaten the financial stability of a small community if not properly planned and prepared for. The *Valtierra* Court appreciated the fact that a mandatory referendum was an effective method for allowing voters to exercise their franchise on matters that have such an impact on their city:

> This procedure ensures that all the people of a community will have a voice in a decision which may lead to large expenditures of local governmental funds for increased public services and to lower tax revenues. 402 U.S. at 143.

As the areas surrounding our large urban centers continue to experience rapid growth, it becomes increasingly important to direct that growth through well considered zoning measures. It is not only reasonable, but good government as well, to allow the citizens of a community, who

are the ones most affected by such growth, to play an active role in shaping its direction. The interests of the community's citizens in having a voice in matters so fundamental to their welfare far outweigh the interests of those who would challenge such a procedure. Furthermore, in the event that the electorate fails to meet its obligation to legislate responsibly, the courts remain open to guarantee that constitutional standards are met.

III. THE CITY OF EASTLAKE'S MANDATORY REFERENDUM PROCEDURE CONSTITUTES NO DENIAL OF EQUAL PROTECTION.

The amicus brief of Lawyers for Housing filed with the Ohio Supreme Court and the concurring opinion of Mr. Justice Stern have raised the specter of racial discrimination. Justice Stern stated:

> Zoning provisions such as that in Eastlake's charter have a single motive, and that is to exclude, to build walls against the ills, poverty, racial strife, and the people themselves, of our urban areas. 41 Ohio St. 2d at 200, 324 N.E.2d at 749.

Although respondents have not squarely presented an equal protection argument, an alchemic mix of due process and equal protection has been carefully blended into their arguments with the use of words such as "suspect" and "exclusionary". In accepting these arguments, Justice Stern wrote, "The inevitable effect of such provisions is to perpetuate the de facto divisions in our society between black and white, rich and poor." *Id.* at 201, 324 N.E.2d at 749. The language hearkens back to the "invidious discrimination" of *Reitman v. Mulkey*, 387 U.S. 369 (1967), and notions of "substantive equal protection." However, a careful analysis of *Reitman* and its progeny demonstrates

that the Eastlake Charter provision is based on neutral principles and that it suffers from no constitutional infirmity.

Reitman, it will be recalled, involved a constitutional amendment in California which repealed the state's fair housing legislation and gave property owners the right to sell their property to whomever they chose, even if they chose to discriminate against blacks or other racial minorities. The discriminatory intent of the amendment was not only self-evident, it was constitutionalized. It conferred a constitutional right to discriminate on every owner of real property.

In *Hunter v. Erikson*, 393 U.S. 385 (1969), discriminatory distinctions were actually written into the Akron charter amendment. The amendment provided that any ordinance which regulates the use, sale, advertisement, transfer, listing, assignment, lease, sublease, or financing of real property on the basis of race, color, religion, national origin, or ancestry must first be approved by a majority of the electors before becoming effective. In striking down the charter amendment the Court observed:

> Only laws to end housing discrimination based on "race, color, religion, national origin or ancestry" must run § 137's gantlet. It is true that the section draws no distinctions among racial and religious groups. Negroes and whites, Jews and Catholics are all subject to the same requirements if there is housing discrimination against them which they wish to end. But § 137 nevertheless disadvantages those who would benefit from laws barring racial, religious, or ancestral discriminations or who would otherwise regulate the real estate market in their favor. The automatic referendum system does not reach housing discrimination on

> sexual or political grounds, or against those with children or dogs, nor does it affect tenants seeking more heat or better maintenance from landlords, nor those seeking rent control, urban renewal, public housing, or new building codes. *Id.* at 390-391.

Because the amendment made distinctions which were constitutionally suspect, the Court applied a test of strict scrutiny requiring a "far heavier burden of justification." *Id.* at 392.

The distinction between Eastlake's charter provision and the one invalidated in *Hunter* is as clear as it is fundamental. Eastlake has not attempted to place differing burdens on differing kinds of zoning legislation. Legislation which would establish stricter zoning standards is subjected to the same scrutiny of the voters as is legislation which would relax the zoning. Whether the zoning affects housing, or whether it affects commercial or industrial uses, the procedure for change is identical. The only classification established by the charter provision is the one that singles out zoning and land use measures for mandatory voter approval. The classification touches on no suspect category and requires only a rational basis to be sustained. The desire of the electorate to scrutinize ordinances which can seriously affect the vested property rights of Eastlake's citizens certainly justifies such a classification. The voters of Eastlake approved the city's original zoning plan; it is only reasonable that they be permitted to take part in any determination to change that plan.

James v. Valtierra, 402 U.S. 137 (1971), like *Reitman*, arose in California. An article of the state constitution provided that no low-rent housing project could be developed, constructed, or acquired in any manner by any

state public body until such project was approved by a majority vote in a community election. Arguably, the application of the provision only to low-rent housing could have a disproportionate effect on racial minorities. The Court expressly rejected the argument, however:

> Unlike the Akron referendum provision, it cannot be said that California's Article XXXIV rests on "distinctions based on race. *Id.* at 391. The Article requires referendum approval for any low-rent public housing project, not only for projects which will be occupied by a racial minority. And the record here would not support any claim that a law seemingly neutral on its face is in fact aimed at a racial minority. Cf. *Comilion v. Lightfoot*, 364 U.S. 339 (1960). The present case could be affirmed only by extending *Hunter*, and this we decline to do. *Id.* at 141.

The *Valtierra* Court recognized that a mandatory referendum provision did place some additional burden on those affected by it. But the Court explained that such burdens are the necessary concomitant of any governmental process:

> [A]ppellees contend that Article XXXIV denies them equal protection because it demands a mandatory referendum while many other referendums only take place upon citizen initiative. They suggest that the mandatory nature of the Article XXXIV referendum constitutes unconstitutional discrimination because it hampers persons desiring public housing from achieving their objective when no such roadblock faces other groups seeking to influence other public decisions to their advantage. But of course a lawmaking procedure that "disadvantages" a particular group does not always deny equal protection. *Under any such holding, presumably a State would not be*

> *able to require referendums on any subject unless referendums were required on all, because they would always disadvantage some group.* And this Court would be required to analyze governmental structures to determine whether a gubernatorial veto provision or a filibuster rule is likely to "disadvantage" any of the diverse and shifting groups that make up the American people. 402 U.S. at 141-42 (emphasis added).

The charter provision at issue in this case rests on even firmer ground than did the constitutional provision in *Valtierra*. It applies not only to zoning that would permit low-rent housing, but to all zoning or land use proposals of whatever kind. Furthermore ,as in *Valtierra*, the record is devoid of any evidence that the amendment was in fact aimed at a racial minority. To affirm the Ohio court in this case would be a far greater extension of *Hunter* than that which was advocated by the plaintiffs in *Valtierra*. As in *Valtierra*, this Court should decline to so extend the holding of *Hunter*. For as the *Valtierra* Court concluded:

> This procedure for democratic decisionmaking does not violate the constitutional command that no State shall deny to any person "the equal protection of the laws." *Id.* at 143.

In the past this Court has stood ready to invalidate zoning which in fact discriminates against racial minorities. *Buchanan v. Warley*, 245 U.S. 60 (1917); *Village of Belle Terre v. Boraas*, 416 U.S. 1, 6 (1974). Should the voters of Eastlake decide to enact zoning laws which are discriminatory, the courts will certainly be available to provide relief. But it is both premature and unjust to indict a procedure which is founded on democratic principles and applicable in an even-handed manner to all zoning and land use measures.

CONCLUSION

Nearly fifty years ago, this Court recognized that a municipality, although it may be a suburb of a large metropolitan city, is nonetheless politically distinct. It was argued at that time that the City of Euclid, which joins in this brief, could not be permitted to determine its own future. The Court forcefully rejected that argument, writing:

> It is said that the village of Euclid is a mere suburb of the city of Cleveland; that the industrial development of that city has now reached and in some degree extended into the village and, in the obvious course of things, will soon absorb the entire area for industrial enterprises; that the effect of the ordinance is to divert this natural development elsewhere with the consequent loss of increased values to the owners of the lands within the village borders. But the village, though physically a suburb of Cleveland *is politically a separate municipality, with powers of its own and authority to govern itself as it sees fit within the limits of the organic law of its creation and the state and Federal Constitutions. Village of Euclid v. Ambler Realty Co.*, 272 U.S. at 389 (emphasis added).

Today, Euclid, now a city and the Cities of Kirtland, Willoughby Hills, and Willowick, join with the City of Eastlake in asking this Court to permit the citizens of these communities to exercise the powers that have been reserved to them under the constitutions of Ohio and of the United States.

At a time when many people have grown to distrust government and feel estranged from it, and when many have felt helpless in their efforts to cope with growing bureaucracies, which affect their lives in so many ways, it

is important to restore the trust and sense of participation which has been the hallmark of this American society since the Revolution. From the town meetings of New England, amendments of state constitutions, citizens have valued their role in America's experiment in democracy. To continue to permit citizens active participation in their government can only lead to a more informed and responsible electorate. The decision of the Ohio Supreme Court must be reversed.

Respectfully submitted,

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